

学校编码: 10384

分类号_____密级 _____

学号: 13620111150202

UDC _____

厦 门 大 学

硕 士 学 位 论 文

公司治理中股东会与董事会权力配置研究

Research on the Power Allocation of Shareholders' Meeting
and the Board of Directors in Corporate Governance

谢兵

指导教师姓名: 肖 伟 教 授

专 业 名 称 : 经 济 法 学

论文提交日期: 2014 年 月

论文答辩时间: 2014 年 月

学位授予日期: 2014 年 月

答辩委员会主席: _____

评 阅 人: _____

2014 年 月

厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下，独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果，均在文中以适当方式明确标明，并符合法律规范和《厦门大学研究生学术活动规范（试行）》。

另外，该学位论文为（ ）课题（组）的研究成果，获得（ ）课题（组）经费或实验室的资助，在（ ）实验室完成。（请在以上括号内填写课题或课题组负责人或实验室名称，未有此项声明内容的，可以不作特别声明。）

声明人（签名）：

年 月 日

厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

（ ） 1.经厦门大学保密委员会审查核定的保密学位论文，
于 年 月 日解密，解密后适用上述授权。

（ ） 2.不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月

内 容 摘 要

公司治理是伴随公司制度的发展而产生的重要课题，在经济全球化浪潮的冲击，公司治理问题日益受到各国的重视。作为公司治理的主要机构，股东会和董事会在公司治理中发挥着重要的作用。理清公司治理中股东会与董事会的权力配置，有利于为立法作出理论指引，有利于实现良好的公司治理。本文的研究将围绕如何实现公司治理中股东会与董事会权力合理配置这一问题展开。去掉引言和结语，本文共分为三章。

本文第一章介绍了有关公司治理中股东会和董事会权力配置的基础理论。首先阐释了公司治理的定义与模式，接着界定了本文研究的主题——“公司治理中股东会和董事会权力配置”的内涵，并对界定股东会和董事会权力配置的意义与原则进行简要分析。

第二章主要是对公司治理中董事会和股东会的权力配置模式进行分析与考察。首先对股东会中心主义和董事会中心主义两种模式中股东会和董事会的权力配置进行分析，接着对目前世界上具有代表性的美国、德国、日本这三个国家的公司治理法律规定进行研究，并结合各国法律经验得出公司治理中股东会和董事会权力配置的几点启示。

第三章在前文分析的基础上，对我国公司治理中股东会和董事会的权力配置进行考察并提出完善建议。首先从立法和实践两个层面考察了目前我国公司治理中股东会和董事会的权力配置现状，接着从明确立法界限、发挥章程协调作用、加强股东会监督、规范董事会权力行使等四个层面提出完善与保障我国公司治理中股东会和董事会应有权力配置的建议。

关键词：股东会；董事会；权力配置

ABSTRACT

With the development of corporation and economic globalization, corporate governance is increasingly becoming an important issue and raises the attention of the countries all over the world. As the main body of corporation, shareholders' meeting and the board of directors play important roles in corporate governance. It is of great significance to clarify the power of them.

Full text is divided into three parts, in addition to the introduction and conclusion. The first chapter introduces the basic theory of the power allocation of shareholders' meeting and the board of directors in corporate governance, including the definition and model of corporate governance, the connotation, principles and significance of the power allocation of shareholders' meeting and the board of directors.

The second chapter summarizes and analyzes power configuration modes of shareholders' meeting and the board of directors. Chapter 2 analyzes the two configuration modes, centralization of plenary session of shareholders' meeting, and centralization of board of directors, then makes a comparative study on the extraterritorial legislation of corporate governance. Based on the legislation and practice of corporate governance in the US, Germany and Japan, this part then provides theoretical guidance to china's legislation and practice.

Chapter 3 first makes an empirical research on the current power allocation of shareholders' meeting and the board of directors in china, from the aspects of legislation and practice, and then proposes four suggestions to improve china's legal system of power allocation of shareholders' meeting and the board of directors. Firstly, clear the power of shareholders' meeting and the board of directors on legislation. Secondly, perform functions of articles of companies to

coordinate with the power of the board of the shareholder's meeting. Thirdly, improve the system of the board of directors to regulate the exercise of the power of the board. Lastly perfect the system of shareholders' meeting to supervise the board of directors better.

Key Words: Shareholders 'Meeting; The Board of Directors; Power Allocation

厦门大学博硕士论文摘要库

目 录

引 言.....	1
第一章 公司治理中股东会和董事会权力配置基础理论.....	2
第一节 公司治理概述	2
一、公司治理释义.....	2
二、公司治理模式.....	4
第二节 股东会和董事会权力配置概论	6
一、股东会与董事会权力配置释义.....	6
二、股东会与董事会权力配置的原则.....	7
三、股东会和董事会权力配置研究的意义.....	10
第二章 公司治理中股东会与董事会权力配置模式的分析与考察....	11
第一节 公司治理中股东会与董事会权力演变分析	11
一、股东会中心主义.....	11
二、董事会中心主义.....	12
三、小结.....	13
第二节 国外法律中股东会与董事会权力配置分析	17
一、美国.....	17
二、德国.....	19
三、日本.....	20
四、小结.....	21
第三章 我国公司治理中股东会与董事会权力配置的考察与完善..	25
第一节 我国公司治理中股东会与董事会权力配置现状的考察	25
一、立法层面.....	25

二、实践层面.....	28
第二节 我国公司治理中股东会与董事会权力配置的完善	32
一、明确股东会与董事会间的权力界限.....	33
二、发挥公司章程的自治作用，协调股东会与董事会权力运行.....	34
三、完善股东会制度，加强股东会对董事会监督.....	35
四、健全董事会制度，规范董事会权力行使.....	39
结 论.....	44
参考文献	46
致 谢.....	52

CONTENTS

Preface.....	1
Chapter 1 Basic Theory of the Power Allocation of Shareholders' Meeting and the Board of Directors in Corporate Governance	2
Subchapter 1 Corporate Governance	2
Section 1 The Definition of Corporate Governance	2
Section 2 The model of corporate governance	4
Subchapter2 The Power Allocation of Shareholders' Meeting and the Board of Directors.....	6
Section 1 The Overview of Oil Futures Markets of theWorld	6
Section 2 The principles of the Power Allocation of Shareholders' Meeting and the Board of Directors s	7
Section 3 The significance of the Power Allocation of Shareholders' Meeting and the Board of Directors	10
Chapter 2 Study on the Model of the Power Allocation of Shareholders' Meeting and the Board of Directors.....	11
Subchapter 1 Analysis on the development of the Power Allocation of Shareholders' Meeting and the Board of Directors	11
Section 1 Shareholder Primacy.....	11
Section 2 Director Primacy	12
Section 3 Summary	13
Subchapter 2 Comparative Study on the Extraterritorial Legislation of the Power Allocation of Shareholders' Meeting and the Board of Directors	17

Section 1	United States.....	17
Section 2	Germany.....	19
Section 3	Japan.....	20
Section 4	Summary.....	21
Chapter 3	Investigation and Improvement of the Power Allocation of Shareholders' Meeting and the Board of Directors in Corporate Governance in China	25
Subchapter 1	Current Legislative and Practical Situations about the Power Allocation of Shareholders' Meeting and the Board of Directors in Corporate Governance in China.....	25
Section1	Current Practical Situations about the Power Allocation of Shareholders' Meeting and the Board of Directors in Corporate Governance in China	25
Section2	Current Legislative Situations about the Power Allocation of Shareholders' Meeting and the Board of Directors in Corporate Governance in China.....	28
Subchapter 2	Improvement of the Power Allocation of Shareholders' Meeting and the Board of Directors in Corporate Governance in China	32
Section 1	Clear the power of shareholders' meeting and the board of directors on legislation.....	33
Section 2	Perform Functions of Articles of Companies to Cordinate with the Power of the Board and the Shareholder's Meeting.....	34
Section 3	Perfect the system of shareholders' meeting to supervise the board of directors better	35
Section 4	Improve the system of the board of directors to regulate the exercise of the power of the board	39

Conclusion	44
Bibliography	46
Acknowledgements	52

厦门大学博硕士论文摘要库

Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to etd@xmu.edu.cn for delivery details.

厦门大学博硕士论文摘要库